Supreme Court, U.S.
FILED
FEB 10 2005
OFFICE OF THE CLERK

(13)

No. 04-278

IN THE
SUPREME COURT OF THE UNITED STATES

---

TOWN OF CASTLE ROCK, COLORADO,
*Petitioner,*

v.

JESSICA GONZALES, individually and as next best friend of her deceased minor children, REBECCA GONZALES, KATHERYN GONZALES, and LESLIE GONZALES,
*Respondent.*

---

On Writ of Certiorari To The
United States Court of Appeals
For the Tenth Circuit

---

# BRIEF *AMICUS CURIAE* OF AARP IN SUPPORT OF RESPONDENT

STUART R. COHEN*
SUSAN ANN SILVERSTEIN
FRANCO A. MUNOZ
AARP FOUNDATION LITIGATION

MICHAEL SCHUSTER
AARP

601 E Street, NW
Washington, DC 20049
(202) 434-2060

Counsel for *Amicus Curiae* AARP
*Counsel of Record

# TABLE OF CONTENTS

Page

TABLE OF CONTENTS

TABLE OF AUTHORITIES ..... ii

INTERESTS OF *AMICUS CURIAE* ..... 1

SUMMARY OF ARGUMENT ..... 2

ARGUMENT ..... 4

I. ELDER ABUSE ALTHOUGH OFTEN UNREPORTED IS ENDANGERING MILLIONS OF OLDER MEMBERS OF OUR SOCIETY, THE TRULY FORGOTTEN VICTIMS OF DOMESTIC VIOLENCE .. 4

II. BY AFFIRMING THE TENTH CIRCUIT'S JUDGMENT THIS COURT WILL SEND A STRONG MESSAGE THAT ALL PROTECTIVE ORDERS MUST BE ENFORCED ..... 7

CONCLUSION ..... 10

## TABLE OF AUTHORITIES

### MISCELLANEOUS

AMERICAN PROSECUTOR'S RESEARCH INSTITUTE, U.S. DEP'T OF JUSTICE, PROTECTING AMERICA'S SENIOR CITIZENS: WHAT LOCAL PROSECUTORS ARE DOING TO FIGHT ELDER ABUSE 3 (2003) ... 4, 8

Candice Heisler, *The Role of the Criminal Justice System in Elder Abuse Cases*, 3 J. ELDER ABUSE & NEGLECT 6 (1991) ..... 6

NATIONAL CENTER ON ELDER ABUSE, U.S. DEP'T OF HEALTH & HUMAN SERVICES, NATIONAL ELDER ABUSE INCIDENCE STUDY: FINAL REPORT §5-1 (1998) ..... 9

N.R. Kleinfield, *Bowed by Age and Battered by an Addicted Nephew*, N.Y. TIMES, Dec. 12, 2004 ... 7

NATIONAL CENTER ON ELDER ABUSE, ELDER ABUSE INFORMATION SERIES, NO.1 ..... 7

NATIONAL CENTER ON ELDER ABUSE, ELDER ABUSE INFORMATION SERIES, NO. 2, TRENDS IN ELDER ABUSE IN DOMESTIC SETTINGS .. 5

OFFICE FOR VICTIMS OF CRIMES, U.S. DEP'T OF JUSTICE, ENFORCEMENT OF PROTECTIVE ORDERS 1 (Jan. 2002) ..... 10

ROBERT C. DAVIS & JUANJO MEDINA-ARIZA, U.S. DEP'T. OF JUSTICE, RESULTS FROM AN ELDER ABUSE PREVENTION EXPERIMENT IN NEW YORK CITY 1 (Sep. 2001) ..... 5, 7, 9

Rosalie S. Wolf, *The Nature and Scope of Elder Abuse*, 24 J. AM. SOC'Y ON AGING 3 (2000) .... 5, 6, 9, 10



Toshio Tatara, *Understanding the Scope and Nature of Domestic Elder Abuse with the Use of State Aggregate Data: Summaries of Key Findings of a National Survey of State APS and Aging Agencies*, 5 J. ELDER ABUSE & NEGLECT 35-37 (1993) ..... 5

No. 04-278

---

IN THE

# Supreme Court of the United States

---

**Town of Castle Rock, Colorado,**
***Petitioner,***

**v.**

**Jessica Gonzales, individually and as next best friend of her deceased minor children, Rebecca Gonzales, Katheryn Gonzales, and Leslie Gonzales,**
***Respondent.***

---

**On Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit**

---

## BRIEF *AMICUS CURIAE* OF AARP IN SUPPORT OF RESPONDENT

---

## INTEREST OF *AMICUS CURIAE*

AARP[1/] is a nonpartisan, nonprofit membership organization of more than 35 million dedicated to addressing the needs and interests of people age fifty and older. AARP seeks through education, bilingual publications, advocacy and

---

[1/] In compliance with Rule 37.3 of this Court, counsel for *amicus curiae* AARP states that all parties have given blanket consent to the filing of all *amicus curiae* briefs, as reduced to an Order by the Court on December 22, 2004. Further, in compliance with Rule 37.6 of this Court, *amicus curiae* AARP states that no counsel for any party authored this brief in whole or in part, and that no party or entity other than this *amicus curiae*, its members or its counsel made a monetary contribution to the preparation or submission of this brief.

service to enhance the quality of life for all by promoting independence, dignity, and purpose.

AARP has taken a leadership role throughout the United States in educating legislators and the public on the serious problem of elder abuse. In 2003 AARP participated in the proposed Elder Justice Act, groundbreaking federal legislation aimed at assuring adequate public-private infrastructure and resources to detect, treat, understand, intervene in, and, where appropriate, prosecute elder abuse and neglect. In Utah, AARP helped draft a new vulnerable adult abuse statute and then lobbied for it in the state House and Senate. The bill passed both the House and Senate without a dissenting vote. In Maryland, AARP co-sponsored with the state Attorney General a series of town hall-style meetings that focused on preventing elder abuse and neglect. In Kentucky, AARP has helped disseminate information generated by the governor's Elder Abuse Commission. AARP has helped enhance New York's elder abuse program, helped draft elder abuse legislation in Iowa, and created an elder abuse awareness manual and video in California, among other projects. And, three years ago AARP initiated a program in Colorado called ElderWatch as a resource to older people who have fallen victim to various forms of elder abuse.

AARP is deeply concerned about the effects that the non-enforcement of protective orders would have on cases of elder abuse especially in cases involving actual or potential physical harm. AARP submits this brief *amicus curiae* in support of respondent and respectfully requests that the Court affirm the judgment of the Court of Appeals for the Tenth Circuit.

## SUMMARY OF ARGUMENT

This brief *amicus curiae* shall focus on the need for enforcement of protective orders in elder abuse cases involving instances of physical(not economic) harm. The decision to not enforce a protective order can have a profound affect on elder abuse and the life of an older person. Repeated violence, physical harm and possibly death can occur as a result of elder



abuse. Many older people are unable to take measures to prevent physical abuse.

Unfortunately, there is no separate, comprehensive national protective order registry detailing the number of protective orders issued in elder abuse cases. Reported cases of elder abuse are, however, rapidly increasing throughout the United States, demonstrating that this is a serious and unresolved problem. The number of reported cases of elder abuse increased by 150% from 1986 to 1996. Experts agree that the actual number of cases is still grossly under-reported. For example, a Congressional study estimated that one out of every 25 older persons is a victim of elder abuse which would translate to approximately one million cases of elder abuse annually. In the same context a private study estimated that only one out of fourteen elder abuse cases comes to the attention of authorities. However, even these estimates may be low because elder abuse, like domestic violence, carries with it a stigma that many victims seek to avoid. Another reason that these estimates may be low is that a large number of the older people who are abused are homebound or are isolated and, therefore, completely out of the public eye. Victims of elder abuse are a particularly vulnerable segment of our society due to their age and physical frailty. Repeat victims of elder abuse have been shown to a have a shorter life expectancy than similarly situated non-victims.

Law enforcement is responsible for responding to and investigating instances of elder abuse and the enforcement of protective orders. Once a protective order is granted therefore, the protected older person becomes dependent on law enforcement to enforce the order and ensure no further abuse occurs. Properly enforced protective orders can protect the oldest and most vulnerable members of our society, while unenforced protective orders are worthless.

Accordingly, AARP respectfully requests that the Court affirm the judgment of the Court of Appeals for the Tenth Circuit.

## ARGUMENT

### I. ELDER ABUSE ALTHOUGH OFTEN UNREPORTED IS ENDANGERING MILLIONS OF OLDER MEMBERS OF OUR SOCIETY, THE TRULY FORGOTTEN VICTIMS OF DOMESTIC VIOLENCE.

The problem of elder abuse is growing and may prove to be much greater in the future as our population ages. Elder abuse in many ways is the forgotten form of domestic abuse. Significant research and attention has been focused on preventing abuse against women and children, but very little research has been conducted on abuse of older people. Enforcement of protective orders can prevent victims from further abuse and will save lives.

In general, a case of elder abuse involves at least one of the following acts or omissions: (1) an intentional act or attempt to inflict physical harm by anyone, or psychological harm by a caretaker; (2) non-consensual sexual contact; (3) failure by a caretaker to provide for satisfying a persons' basic life needs; *i.e.*, food, care, housing, medical attention, or other necessities; and, (4) illegal or inappropriate use or taking of an individual's assets or properties.[2/]

In the United States the number of reported cases of elder abuse is calculated by combining state reports of abuse cases with modifications for differences in definitions and

---

[2/] AMERICAN PROSECUTOR'S RESEARCH INSTITUTE, U.S. DEP'T OF JUSTICE, PROTECTING AMERICA'S SENIOR CITIZENS: WHAT LOCAL PROSECUTORS ARE DOING TO FIGHT ELDER ABUSE 3 (2003) [hereinafter, PROTECTING AMERICA'S SENIOR CITIZENS].



eligibility.[3/] This brief *amicus curiae* shall focus on reports of physical harm to older people, and not economic harm.

Virtually all State agencies charged with addressing the problem of elder abuse reported increases in their caseloads during the last survey.[4/] Reported cases of elder abuse increased by 150% from 1986 to 1996.[5/] Whether the rise in reported cases is due to an increase in the number of older people in our society or an in awareness of elder abuse is unknown. Although there are no new studies since the 1990s experts agree that there is still significant under-reporting of elder abuse.

Most elder abuse is actually domestic violence and the perpetrator, just as in other forms of domestic violence, is likely to be a close family member of the abused older person.[6/]

---

[3/] Rosalie S. Wolf, *The Nature and Scope of Elder Abuse*, 24 J. AM. SOC'Y ON AGING 3 (2000) (citing TOSHIO TATARA, NATIONAL CENTER ON ELDER ABUSE, AN ANALYSIS OF STATE LAWS ADDRESSING ELDER ABUSE, NEGLECT, AND EXPLOITATION (1995)), *available at* http://www.generationsjournal.org/gen-24-2/intro.html (last visited Jan. 31, 2005).

[4/] Toshio Tatara, *Understanding the Scope and Nature of Domestic Elder Abuse with the Use of State Aggregate Data: Summaries of Key Findings of a National Survey of State APS and Aging Agencies*, 5 J. ELDER ABUSE & NEGLECT 35-37 (1993).

[5/] *See* ROBERT C. DAVIS & JUANJO MEDINA-ARIZA, U.S. DEP'T. OF JUSTICE, RESULTS FROM AN ELDER ABUSE PREVENTION EXPERIMENT IN NEW YORK CITY 1 (Sep. 2001) (citing NATIONAL CENTER ON ELDER ABUSE, ELDER ABUSE INFORMATION SERIES, NO. 2, TRENDS IN ELDER ABUSE IN DOMESTIC SETTINGS), *available at* www.ncjrs.org/pdffiles1/nij/188675.pdf (last visited Jan. 31, 2005).

[6/] NATIONAL CENTER ON ELDER ABUSE, ELDER ABUSE INFORMATION SERIES, NO. 2, TRENDS IN ELDER ABUSE IN DOMESTIC SETTINGS, *at* http://www.elderabusecenter.org/pdf/basics/fact2.pdf (last visited Jan. 31, 2005) ("Adult Children are the most frequent abusers of the elderly, and this

The victim may be reluctant to prosecute because of the stigma attached to admitting to being a victim of elder abuse or due to "confusion, inadequate emotional or financial support, or lack of understanding about the process and end results of prosecution. . . . or from fear resulting from the defendant's intimidation."[7/]

In 1996 the House Select Committee on Aging and a separate private study concluded that the number of elder abuse cases was woefully under-reported. The Committee's report estimated that only one in five cases of elder abuse is reported to authorities.[8/] This ratio of reported to unreported cases may be low because a large number the older people who were abused are homebound, isolated and completely out of the public eye.[9/] The Committee's report estimated that each year one out of every 25 older people is victimized resulting in approximately one million cases of elder abuse annually.[10/] The private study, however, estimated that only one out of

---

category experienced the biggest increase in its composition of the total reports: 30.1 percent in 1990 to 36.7 percent in 1996. Other family members and spouses ranked as the next most likely abusers of older people. Other family members comprised 16.1 percent of all reports in 1990 and 10.8 percent of all reports in 1996, while spouses comprised 15.9 percent of all reports in 1990 and 12.6 percent in 1996.").

[7/] Candice Heisler, *The Role of the Criminal Justice System in Elder Abuse Cases*, 3 J. ELDER ABUSE & NEGLECT 6 (1991) (citing G.A. GOOLKASIAN, U.S. DEP'T OF JUSTICE, CONFRONTING DOMESTIC VIOLENCE: THE ROLE OF CRIMINAL COURT JUDGES (Nov. 1986)).

[8/] Heisler, *supra* note 7, at 27 n. 5.

[9/] Wolf, *supra* note 3, *available at* http://www.generationsjournal.org/gen-24-2/intro.html.

[10/] Heisler, *supra* note 7, at 5 (citing Claude Pepper, Chairman, Subcommittee on Aging; K. Pillemer & D. Finkelhor, *The Prevalence of Elder Abuse: A Random Sample Survey*, 28 GERONTOLOGIST 51-57 (1988) (Pillemer and Finkelhor estimated that the rate of elder abuse, excluding fiduciary abuse was 3.2 percent.)



fourteen elder abuse cases comes to the attention of authorities resulting in 820,000 to 1,860,000 victims of elder abuse annually.[11/] By either estimate it is clear that the majority of elder abuse cases went unreported to state protective services.

"The U.S. Bureau of the Census predicts that by 2030, the population over age 65 will nearly triple to more than 70 million and older people will make up more than 20 percent of the population (up from 12.3 percent in 1990)."[12/] An increase in reported cases of elder abuse will likely result as the population ages. Therefore, it can be anticipated that protective orders will have an increasingly important role in combating elder abuse.

## II. BY AFFIRMING THE TENTH CIRCUIT'S JUDGMENT THIS COURT WILL SEND A STRONG MESSAGE THAT ALL PROTECTIVE ORDERS MUST BE ENFORCED.

Just as Jessica Gonzales was totally dependent upon the enforcement of a protective order to protect herself and her minor children, victims of elder abuse are also equally dependent on the enforcement of protective orders.[13/] The

---

[11/] NATIONAL CENTER ON ELDER ABUSE, ELDER ABUSE INFORMATION SERIES, NO.1, TYPES OF ELDER ABUSE IN DOMESTIC SETTINGS 1(citing TOSHIO TATARA & LISA KUZMESKUS, NATIONAL CENTER ON ELDER ABUSE, SUMMARIES OF STATISTICAL DATA ON ELDER ABUSE IN DOMESTIC SETTINGS FOR FY 95 AND FY 96 (1997); Karl Pillemer & David Finkelhor, *The Prevalence of Elder Abuse: A Random Sample Survey* 28 GERONTOLOGIST 51-57 (1988)), *available at* http://www.elderabusecenter.org/pdf/basics/fact1.pdf.

[12/] *See* DAVIS & MEDINA-ARIZA, *supra* note 5, at 1 (citing U.S. BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE, STATISTICAL ABSTRACTS OF THE UNITED STATES (11th ed. 1991)).

[13/] *See* N.R. Kleinfield, *Bowed by Age and Battered by an Addicted Nephew*, N.Y. TIMES, Dec. 12, 2004, *available at* http://www.nytimes.com/2004/12/12/nyregion/12elder.html (last visited Jan. 21, 2005) (This article details the tragic story of two elderly sisters battered,

importance of enforcing protective orders in domestic violence situations is unquestioned because it can provide relief from violence. The abuser and the victim in domestic violence and elder abuse situations share many similarities including the implications of non-enforcement of protective orders. The enforcement of the protective order is necessary to convince the abuser that violence against a spouse, child, or older person is still a crime.

Prosecutors have a key role in combating elder abuse by ensuring that protective orders are issued and abusers are prosecuted. Adult Protective Services workers identified prosecution of elder abusers as one of the most important services to be provided by law enforcement.[14] "At the same time they named prosecution the *most* difficult service to obtain from criminal justice professionals, citing a 'lack of interest or cooperation from prosecutors in bringing cases of elder abuse to court.'"[15] Abused older people must be able to have confidence that law enforcement will effectively enforce the protective order, just as they would enforce any other court order.

Failure to enforce protective orders can result in recurring harm and possibly death to the "protected" older

---

abused and forced to beg for money by their drug addicted nephew. One of the sisters had a protective order against the nephew, however, the order was not enforced for almost a year. During the course of the abuse the sisters lost their house, all of their possessions, and were severely beaten when they attempted to refuse to face the elements and beg on the streets of New York City for money to support the nephew's drug habit. Eventually a proactive and persistent police officer helped to enforce the protective order and ensured the nephew was arrested.)

[14] PROTECTING AMERICA'S SENIOR CITIZENS, *supra* note 2, at 4 (citing B.E. Blakely & Ronald Dolon, *Perceptions of Adult Protective Services Workers of the Support Provided By Criminal Justice Processionals in a Case of Elder Abuse*, 12 J. ELDER ABUSE & NEGLECT 3-4 (2000)).

[15] PROTECTING AMERICA'S SENIOR CITIZENS, *supra* note 2, at 4 (emphasis in original).



person. Abused older people are a particularly vulnerable segment of our society. Studies have shown that three out of four abused and neglected older people suffer from physical frailty. About one-half (47.9%) of the substantiated cases of abuse and neglect involved older people who were not physically able to care for themselves, while 28.7% of victims could care for themselves marginally.[16] Clinical accounts have documented severe emotional distress and an increased mortality rate among mistreated older people.[17] Of the few studies[18] that record the effects of elder abuse on the victims some have suggested that elder abuse causes the victims to incur feelings of helplessness, alienation, guilt, shame, fear, anxiety, denial, and posttraumatic stress syndrome. In one study the mortality rates of the non-abused and the abused were tracked and compared, after thirteen years 40 percent of the non-abused older people were still alive while only 9 percent of the physically abused older people were still alive. After making proper adjustments for factors that might affect mortality (age, gender, income, *etc.*) the researchers

---

[16] NATIONAL CENTER ON ELDER ABUSE, U.S. DEP'T OF HEALTH & HUMAN SERVICES, NATIONAL ELDER ABUSE INCIDENCE STUDY: FINAL REPORT §5-1 (1998), *available at* http://64.233.161.104/search?q=cache:Yi6wEOiW1dEJ:www.aoa.gov/eldfam/Elder_Rights/Elder_Abuse/ABuseReport_Full.pdf+National+Center+on+Elder+Abuse,+National+Elder+Abuse+Incidence+Study:+Final+Report+&hl=en.

[17] DAVIS & MEDINA-ARIZA, *supra* note 5, at 1 (citing Rosalie S. Wolf, *Elder Abuse and Neglect: An Update*, 7 REV. CLINICAL GERONTOLOGY 177-82 (1997)).

[18] *See* Wolf, *supra* note 3, *available at* http://www.generationsjournal.org/gen-24-2/intro.html (citing B.K. Booth, A.A. Bruno & R. Marin, *Psychological Therapy with Abused and Neglected Patients*, *in*, ABUSE, NEGLECT, AND EXPLOITATION OF OLDER PEOPLE: STRATEGIES FOR ASSESSMENT IN INTERVENTION (L. A. Baumhover & S. C. Beall ed., 1996); K. Solomon, *Victimization by Health Professions and the Psychologic Response of the Elderly*, *in*, ABUSE AND MALTREATMENT OF THE ELDERLY: CAUSES AND INTERVENTIONS (J. I. Kosberg, ed.1983).

determined mistreatment causes "extreme interpersonal stress that may confer additional death risk."[19/]

Law enforcement officials, who are charged with enforcing protective orders are the gatekeepers of the criminal justice system. They have an essential role in society's response to elder abuse by responding to and investigating instances of elder abuse and enforcing protective orders. However, protective orders are only effective when the restrained party is convinced that the order will be enforced. Unequivocal, standardized enforcement of court orders are essential to protect the older members of our society.[20/]

## CONCLUSION

Elder abuse has profound consequences to its victims and our society as a whole. Many older people are unable to prevent further abuse when protective orders are violated and not enforced. Once a protective order is issued the older person becomes dependent upon law enforcement to enforce the order. Enforcement of protective orders can protect the oldest and most vulnerable portion of our society. Due to the fact that such a small percentage of elder abuse cases are actually reported, it is imperative that when an instance of elder abuse is reported and a protective order is granted that the order be enforced.

For the foregoing reasons, AARP respectfully requests that the Court affirm the judgment of the Court of Appeals for the Tenth Circuit.

---

19/ Wolf, *supra* note 3, *available at* http://www.generationsjournal.org/gen-24-2/intro.html (citing M.S. Lachs, et al., *The Mortality of Elder Abuse*, 280 J. AM. MED. ASS'N 428-32 (1998).

20/ OFFICE FOR VICTIMS OF CRIMES, U.S. DEP'T OF JUSTICE, ENFORCEMENT OF PROTECTIVE ORDERS 1 (Jan. 2002), *available at* http://www.ojp.usdoj.gov/ovc/publications/bulletins/legalseries/bulletin4/welcome.html.



February 10, 2005

Respectfully submitted,

Stuart R. Cohen*
Susan Ann Silverstein
Franco A. Munoz
AARP Foundation Litigation

Michael Schuster
AARP

601 E Street NW
Washington, DC 20049
(202) 434-2060

Counsel for *Amicus Curiae* AARP

* Counsel of record